of title, but merely an application of the language of the instrument. *Blair* v. *Smith*, 16 Mo. 273; *Hagey* v. *Detweiler*, 35 Pa. St. 409. But if the description is clear, the agreement is avoided by the statute, as it involves an actual transfer of land. *Olin* v. *Henderson*, 120 Mich. 149, 79 N. W. 178; *Vosburgh* v. *Teator*, 32 N. Y. 561. Yet it has been held that a line thus marked out and acted upon is conclusive, even when the description is certain. *Helm* v. *Wilson*, 76 Cal. 476, 18 Pac. 604. *Cf. Knowles* v. *Toothaker*, 58 Me. 172. It seems just that the original parties or a purchaser with notice should be estopped to dispute the validity of such an agreement, but it is difficult to see how a purchaser who acted in reliance on the deeds without notice of the agreement could be affected by it. *McKinney* v. *Doane*, 155 Mo. 287, 56 S. W. 304. The principal case may be supported on the ground that the purchasers, having seen the property, had notice of its agreed bounds. *Bartlett* v. *Young*, 63 N. H. 265.

CONSTITUTIONAL LAW — CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONS — RIGHT OF COUNTY TO TEST CONSTITUTIONALITY OF STATUTE. — A statute authorized the expenditure of state money for certain roads within certain counties. The plaintiff county sought to restrain the state officers from proceeding under the statute on the ground that it was unconstitutional. The county was not required to contribute in taxes as a corporation, and its property rights were not affected. *Held*, that the county has no legal capacity to sue. *County of Albany* v. *Hooker*, 204 N. Y. 1, 97 N. E. 403.

No person whose rights are not directly affected by a statute can object to its constitutionality. *Clark* v. *Kansas City*, 176 U. S. 114, 20 Sup. Ct. 284. The doctrine is general that, in the absence of a statute imposing the duty on some official, any taxpayer may enjoin the misapplication of public funds by municipal officers, on the ground that the act, in increasing taxation, directly injures him. *Davenport* v. *Kleinschmidt*, 6 Mont. 502, 13 Pac. 249. But where his individual interests are not involved, the taxpayer cannot sue. *Prince* v. *Crocker*, 166 Mass. 347, 44 N. E. 446. Counties are local subdivisions of the state. *Board of Commissioners of Hamilton County* v. *Mighels*, 7 Oh. St. 109. They are not protectors of private interests or property of taxpayers and cannot intervene to prevent injuries to them. See *People* v. *Ingersoll*, 58 N. Y. 1, 29. So a county cannot complain if the state regulates the funds to be raised to pay county debts of a public character. *State ex rel. Dillon* v. *Braxton County Court*, 60 W. Va. 339, 55 S. E. 382; *City Council of City and County of Denver* v. *Board of Commissioners of Adams County*, 33 Colo. 1, 77 Pac. 858. In the principal case, the county in its corporate capacity will suffer no injury, since it is not a taxpayer; and, as the court points out, the public by authorized proceedings should have brought the suit. Clearly if the funds of the county as a corporation, in its possession or to which it was equitably entitled, were being misappropriated, the county could sue. *Bridges* v. *Board of Supervisors of County of Sullivan*, 92 N. Y. 570; *Woods* v. *Board of Supervisors of Madison County*, 136 N. Y. 403, 32 N. E. 1011.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — STATUTE REQUIRING COMMITMENT FOR REFUSAL TO TESTIFY BEFORE LEGISLATIVE COMMITTEE BY JUDGE OF COURT WITHOUT HEARING. — A statute provided that when a witness duly subpœnaed refused without reasonable cause to testify before a committee of the legislature, he might by warrant be committed to jail until he submitted to do so, by a judge of any court of record upon proof by affidavit of the facts. *Held*, that the statute is unconstitutional. *In re Barnes*, 132 N. Y. Supp. 908 (App. Div.).

Notice and an opportunity to be heard are, as a general rule, essential elements of due process of law. See *Simon* v. *Craft*, 182 U. S. 427, 436, 21 Sup. Ct. 836, 839. One apparent exception to the rule, however, has always existed

in the case of summary commitments for contempt committed in the presence of the court. *Ex parte Terry*, 128 U. S. 289, 9 Sup. Ct. 77; *Thwing* v. *Dennie*, Quincy (Mass.) 338. But in the case of a contempt either criminal or civil, not committed in the presence of the court, there must always be a hearing and, in most cases, notice before attachment. *Ex parte Stricker*, 109 Fed. 145; *Ex parte Langdon*, 25 Vt. 680. But *cf. Ex parte Haley*, 37 Mo. App. 562. The legislature may also punish a contempt, such as a refusal to testify, committed before it or its committee carrying on an investigation for legislative purposes. *People ex rel. McDonald* v. *Keeler*, 99 N. Y. 463, 2 N. E. 615; *Lowe* v. *Summers*, 69 Mo. App. 637. But where the contempt is committed before a committee, it cannot be punished by the committee but must be reported to the legislative body for its action. See *In re Davis*, 58 Kan. 368, 379, 49 Pac. 160, 163; COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 193. As held in the principal case, therefore, it would seem not due process of law to allow a court to punish without notice or a hearing a contumacious act which not only did not occur in its presence but was not a contempt of the court but of the legislature.

CONTEMPT — POWER TO PUNISH FOR CONTEMPT — POWER OF SUPREME COURT TO PUNISH FOR CONTEMPT OF LOWER COURT. — A newspaper published statements tending to prove that a person accused of murder and remanded to appear before a lower court was guilty. Application was made to the Supreme Court to punish the members of the staff of the paper for contempt. *Held*, that the Supreme Court has jurisdiction in the matter. *In re Packer*, [1911] V. L. R. 401.

Every superior court possesses an inherent power of employing contempt proceedings to prevent any interference with its administration of justice. *Ex parte Fernandez*, 10 C. B. N. S. 3; *Ex parte Terry*, 128 U. S. 289, 9 Sup. Ct. 77. This power can be exercised only by the court whose authority is being defied. *Androscoggin & Kennebec R. Co.* v. *Androscoggin R. Co.*, 49 Me. 392; *People* v. *Placer County Judge*, 27 Cal. 151. Accordingly, the few American cases on the subject hold that an upper court cannot punish for contempt of a lower court. *Lessee of Penn* v. *Messinger*, 1 Yeates (Pa.) 2; *In re Emery*, 149 Mich. 383, 112 N. W. 951. The earlier English cases also took this view. *Rex* v. *Burchett*, 1 Str. 567; *In the Matter of an Application for an Attachment for Contempt of Court*, 2 T. L. R. 351. The recent English authorities, however, decide that where a lower court is powerless to prevent an interference with its administration of justice, the upper court will intervene by an attachment for contempt. *Rex* v. *Davies*, [1906] 1 K. B. 32; *Rex* v. *Clarke*, 103 L. T. 636. These authorities argue that the purpose of contempt proceedings is to protect the administration of justice rather than the dignity of any court. Yet it is because a particular court is being prevented from exercising its proper functions that the summary contempt process is allowed. See *United States* v. *Hudson*, 7 Cranch (U. S.) 32, 34; *Cartwright's Case*, 114 Mass. 230, 238. Indictment is the proper remedy for the public wrong involved. *Rex* v. *Fisher*, 2 Camp. 563. The reasoning of the principal case is therefore open to criticism, although the result accomplished is perhaps desirable.

COPYRIGHTS — COMMON-LAW RIGHT: PROPERTY IN MUSICAL IDEA. — The plaintiff was the author of the music of a song, on each published copy of which appeared the reservation "Public performance strictly forbidden." The defendant without authorization transferred the music to phonograph records. *Held*, that the plaintiff is not entitled to an injunction against the making or selling of the records. *Monckton* v. *Gramophone Co.*, 132 L. T. J. 295 (Eng., C. A., Jan. 24, 1912).

For a discussion of the principles involved, see 19 HARV. L. REV. 134.